

UNITED STATES PATENT AND TRADEMARK OFFICE

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APR 29 2004

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte MARKUS WIMMER,  
SERGE VOS and MARCUS JAUTZE

Application No. 09/873,290

NOTIFICATION OF NON-COMPLIANCE REGARDING ORAL HEARING

The file record reflects that the appellants filed a Reply Brief (Paper No. 11) on July 8, 2003. On page 5 of the Reply Brief, appellants included a section requesting an oral hearing in connection with the appeal.

Effective December 1, 1997, 37 CFR § 1.194(b) was amended to provide that a request for an oral hearing must be filed in a separate paper.<sup>1</sup>

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<sup>1</sup> 37 CFR § 1.194(b) provides in pertinent part:

If appellant desires an oral hearing, appellant must file, in a separate paper, a written request for such hearing accompanied by the fee set forth in § 1.17(d) within two months from the date of the examiner's answer.

Since the appellants' request for oral hearing was not filed in a separate paper as required by 37 CFR § 1.194(b), the appellants' request for an oral hearing cannot be granted. Further, the \$280 fee for the oral hearing fee submitted with the Reply Brief is refundable under 37 CFR § 1.26 since it was paid by mistake or in excess of that required.

If the appellants desire the \$280 fee for the oral hearing fee to be refunded, a request for refund should be filed as soon as possible.

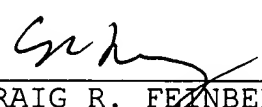
If the appellants still desire an oral hearing, a petition under 37 CFR § 1.183 must be filed **within two weeks** of the mail date of this notice. Such a petition must include (1) a request to suspend the separate paper requirement of 37 CFR § 1.194(b); (2) a showing of facts to establish that an extraordinary situation exists and that justice requires the separate paper requirement of 37 CFR § 1.194(b) be suspended or waived; and (3) be accompanied by the petition fee set forth in 37 CFR § 1.17(h). This **two week time period** for filing a petition under 37 CFR § 1.183 is not extendable under 37 CFR § 1.136(a). The failure to timely file a petition under 37 CFR § 1.183 will

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result in the appeal being decided without an oral hearing  
(i.e., on brief).<sup>2</sup>

By Order of the:

BOARD OF PATENT APPEALS  
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CRAIG R. FEINBERG  
Program and Resource  
Administrator  
(703) 308-9797

cc: Crowell & Moring LLP  
Intellectual Property Group  
P.O. Box 14300  
Washington, D.C. 20044-4300

CRF/psb/pb

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<sup>2</sup> If the appellants decide not to file a petition under  
37 CFR § 1.183, the Board of Patent Appeals and Interferences  
would appreciate written notice thereof so that a decision on the  
appeal can be expedited.